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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MARLYN SALAZAR et al. Defendants and Appellants.	B235685 (Los Angeles County Super. Ct. No. BA360620)

APPEALS from judgments of the Superior Court of Los Angeles County. Lisa B. Lench, Judge. Affirmed.

Lynette Gladd Moore, under appointment by the Court of Appeal, for Defendant and Appellant Marlyn Salazar.

Jonathan P. Milberg, under appointment by the Court of Appeal, for Defendant and Appellant Ana Lisia Pulido.

Murray A. Rosenberg, under appointment by the Court of Appeal, for Defendant and Appellant Erik Pulido.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez, David Zarmi and Seth McCutcheon, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Ana Lisia Pulido (Ana Lisia) and Erik Pulido (Erik) guilty of resisting executive officers by threat or violence (Pen. Code, § 69)[1] and Marlyn Salazar (Salazar) guilty of willfully resisting, delaying or obstructing peace officers (§ 148, subd. (a)).[2] As to Ana Lisia and Salazar, the trial court suspended imposition of sentence. Ana Lisia was placed on formal probation for three years and was required as a condition, inter alia, to serve 90 days in county jail. Salazar was placed on summary probation for three years with the sole condition that she serve two days in county jail. Erik was sentenced to the midterm of two years in state prison. Each of the defendants received two days presentence custody credit.[3]

On appeal, the defendants argue that there was insufficient evidence to support their convictions. Erik and Ana Lisia contend that the trial court erred when it excluded photographs necessary to their defense and failed to instruct the jury on self-defense or defense of another pursuant to CALCRIM No. 3470. Even if those errors are harmless individually, Erik and Ana Lisia contend that the cumulative effect of those errors was prejudicial. Ana Lisia and Salazar request appellate review of any evidence produced in response to their *Pitchess* motions.[4] Last, Ana Lisia claims that the trial court erred when it did not dismiss the case in the interests of justice, reduce her offense to a misdemeanor or grant her motion for new trial. The defendants have failed to demonstrate grounds for reversal. Accordingly, we affirm.

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[1] All further statutory references are to the Penal Code unless otherwise indicated.

[2] We refer to Erik, Ana Lisia and Salazar collectively as the defendants.

[3] A case was also filed against Erik and Ana Lisia's father, Ismael Pulido (Ismael). Ismael died before trial and the case against him was dismissed pursuant to section 1385 in the interests of justice.

[4] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

FACTS

Prosecution Case-In-Chief

The testimony of Detective Benavides, Detective Thompson and Officer Garcia

On August 18, 2009, Los Angeles Police Detectives Julio Benavides and Ed Moreno wanted to speak to Deandrey Perry (Perry)[5] because they believed that he was a possible witness to a homicide. Prior to initiating contact, Detective Benavides called the Newton division station and asked Detective Tommy Thompson to run a computer check on Perry. Detective Thompson reported that Perry had two outstanding felony warrants and was a documented member of the Pueblo Bishop Bloods gang. The warrants were for possession of a loaded firearm in a public place and receiving stolen property. Hoping to locate Perry, Detectives Benavides and Moreno proceeded to the intersection of 48th Street and Ascot Avenue in Los Angeles. They saw Perry standing on a corner with Erik. Detective Benavides got out of his car and called for Perry to come over to him. Perry took a step backwards, clutched his waistband and ran into the Pulido home.

It is common for gang members to hold weapons in their waistbands. As a result, Detective Benavides formed the opinion that Perry might be carrying a weapon. While Detective Benavides stood on the street corner and watched the front and right side of the house, Detective Moreno went to an alley behind the house and watched it from there. According to Detective Benavides, he could hear Detective Moreno on the radio broadcasting that he and his partner had "a felon that's running," and then requesting additional police units.[6] Erik was standing near the front gate with his father, Ismael. Ana Lisia was on the porch. She appeared as though she was pregnant. At some point, Salazar came out of the house. They stared at Detective Benavides as he waited for backup.

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[5] Perry's first name is spelled Deandre and Deandrey in the record. When he testified, he identified his first name as "Deandrey."

[6] Detective Moreno did not testify.

Multiple units responded to the scene within minutes, including an airship, Detective Thompson, Detective Gersna, Officer Jason Garcia, Officer De la Cruz and Officer Joseph Marx.[7] Officers stationed themselves at the corners within a block of the Pulido home and contained the perimeter. Detective Benavides advised several officers that it appeared Perry might be armed. Neither Detective Benavides nor Detective Thompson were told or believed that Perry had escaped from the Pulido home.

Eventually, several of the detectives conferred and decided to clear the front yard of the Pulido property, enter the Pulido home and search it for Perry. Detectives Benavides, Moreno and Thompson approached the front yard with another detective and some uniformed officers. The yard was closed off by a chain link fence and had a chain link gate. Ana Lisia told Ismael not to let the police into the house. She was talking on the phone in an angry manner and was yelling profanities. Detective Thompson told her that the police were searching for a wanted felon, and that because he ran into the Pulido home, the police needed to search it. She said, "Fuck you guys, you guys aren't coming in. You want to talk to my lawyer? You can talk to him." She held her cell phone in the air. She accused the police of harassing her family; she said that "we" did not do anything. At that point, she told Ismael to close the gate. He tried to close it. Detective Thompson grabbed the gate. The two of them pushed and pulled on it, but eventually Detective Thompson was able to get the gate open. Ismael approached Detective Thompson in a quick motion and stood in front of him, barring his path.

Detective Thompson believed Ismael was obstructing officers from doing their duties in violation of section 148 and told him that he was under arrest. Ismael placed his hands on Detective Thompson's shoulder/chest area. Detective Thompson tried to turn Ismael around to put handcuffs on him. Officers shouted that they needed to clear the Pulido home to search for a potentially armed suspect. Ana Lisia told Detective Thompson to let go of Ismael. She swung at Detective Thompson; he ducked and

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[7] The defendants claim that 20 to 30 uniformed officers responded as well as various detectives.

avoided being hit. Officers yelled, "Stop resisting," about 10 to 15 times. Detective Thompson and Ana Lisia fell to the ground together. She said she was pregnant. He focused on her and tried to put her in handcuffs as gently as possible, but she kept pulling her arm away. He told her, "Stop fucking fighting." Because he was being careful, it took him a minute or more to finally handcuff her.

At the same time Ana Lisia attacked, Erik screamed something about Ismael, charged in like a bull and began swinging at the uniformed police officers near the gate. Officer Marx joined the melee and told Erik to stop, he was under arrest. Erik took a swing at Officer Marx.[8] In the melee, Ismael was taken to the ground.

Once Ismael went down, Erik ran onto the porch as though attempting to get inside the house. Officer Garcia and Officer De La Cruz pursued and conducted a team takedown. When Erik was on the ground, he put his arms under his body and tried to push himself up. Officer De La Cruz tried to control Erik's feet and got kicked. Officer Garcia shouted at Erik in a loud voice, "Give me your arms, give me your arms," and to quit resisting. Between Officer Garcia, Officer De La Cruz and Officer Marx, Erik was told to quit resisting more than 20 times. At some point, Officer Marx hit Erik with a collapsible baton three or four times. Officer Garcia and Officer De La Cruz used their body weight to hold Erik down. With the help of Detective Gersna, they eventually managed to get Erik into handcuffs. The struggle on the ground lasted about a minute. As Officer Garcia and Officer Marx walked Erik to a police car, he cursed about Perry.

During the fighting, Salazar approached officers. She pushed and kicked them. When she was told she was under arrest, she resisted. She was eventually taken into custody. Ismael was also arrested. An ambulance was called for him because he had a head injury. Detective Benavides eventually saw that someone had applied a bandage to Ismael's head.

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[8] Detective Benavides testified that Erik attacked the police before Ana Lisia attacked. According to Detective Thompson, Ana Lisia attacked first and Erik attacked right after.

The detectives and some uniformed officers entered the Pulido home and searched it. They did not find Perry or a gun. A K-9 unit located Perry somewhere outside of a neighboring property. He was unarmed.

The radio broadcasts

The prosecution played a recording of the radio broadcasts made by the police as the incident at the Pulido home unfolded. In part, the jury heard that the airship asked Detective Moreno where he last saw the suspect. Detective Moreno gave the airship the Pulido street address. He said "he was going back to the rear alley, and saw [Perry]" and that Perry "hopped over a wall and somewhere [*sic*], probably [the Pulido street address]."

The expert testimony of Deputy Silverman

Cory Silverman, a Los Angeles County deputy sheriff, testified regarding exigent circumstances and the use of force.

Officers are trained that exigent circumstances allow them to pursue a fleeing felon into a home to make an arrest. An important consideration is that the felon should be apprehended sooner rather than later because he poses a threat to the community. For example, he might steal a car or commit a carjacking in an effort to escape the area. If a suspect resists arrest, officers can use pepper spray, control holds and takedowns. For a suspect who assaults or threatens to assault an officer, an officer can use punches, a strike to the face, or a carotid restraint. In addition, an officer can use a baton to nonvital areas such as legs, hands and torso, and he could also use a taser. A canine unit could also be used. Generally speaking, officers are trained to use the amount of force that will stop the threat. Ideally, they will use slightly more force than the suspect is using.

Presented with a hypothetical based on the facts elicited during the prosecution's case, Deputy Silverman opined that the police used a reasonable amount of force. Asked why he formed that opinion, he stated, "Because at one point in each of their contacts with the people in the yard, those people in the yard were assaulting the officers. The officers actually used commendable restraint by trying just to take them down and control them. [¶] It sounds like one person had to be struck with a baton. But that" is allowed

when a suspect is kicking an officer. According to Deputy Silverman, the officers could have lawfully chosen to use pepper spray, tasers, fist or flashlight strikes, and more baton strikes.

Use of force can result in injury to a suspect. The presence of an injury, however, does not prove that the force was excessive. When an administrator or other professional evaluates the use of force, they have to put themselves into the officers' positions rather than use hindsight.

On cross-examination, Deputy Silverman was asked if his opinion of the use of force in the hypothetical would change if the police knew that the suspect was no longer in the targeted house. Deputy Silverman said that there would be no need for the officers to go onto the property.

The Defense Case

Ana Lisia's testimony

At about 4:00 p.m., Ana Lisia saw a detective standing in the back of her house by the driveway. The next thing she saw was Perry walk through her house from the porch to the kitchen and go outside. He jumped over the wooden fence in the back. The detective walked toward the alley from the driveway and told Perry to stop. Ana Lisia heard helicopters and went to the front porch. She saw police officers and detectives, and she also saw Erik, Salazar with her three-year-old son, and Salazar's sister Marbella and brother Erick. Ismael was in the living room.

Detective Thompson approached the gate. According to Ana Lisia, she "kept on asking what's going on, and [the police] just kept saying [that] we needed to get the fuck out of our house." She called her sister, Liliana Pulido (Liliana), who works as a legal secretary for an attorney. Ana Lisia asked Liliana to ask the attorney for advice. The police heard Ana Lisia and laughed at her like it was a joke. The attorney told her not to let the police onto the Pulido property if they did not have a warrant and if they had not given her a reason to enter. She told the police that "no one is fucking coming in." The police never asked if Perry was in the Pulido home and never said they wanted to search for him.

Ana Lisia was by the gate. By then, Ismael was on the porch. He asked Ana Lisia what was happening and she told him to calm down. Ismael told Erik to go inside and close the door. After that, Ismael joined Ana Lisia by the gate. There was a struggle at the gate. Detective Thompson tried to push the gate in, but the gate only opens out. Ana Lisia pushed the gate out and "didn't have a chance anymore to lock [it]." Detective Thompson opened the gate and "it just went chaotic. It went crazy." She and Ismael were pushed down onto the porch steps. Officers fell on top of them. She started cursing and telling them to leave Ismael alone. In addition, she told the officer on top of her that she was pregnant and he needed to get off of her. She testified that the officers "were just cussing back at me, to shut the fuck up, stop resisting. I said I'm not resisting. I'm not moving at all. He had me pinned down. I couldn't move at all. [¶] [Ismael] was getting striked [*sic*] several times with the baton. I was crying and screaming and yelling to leave my father alone. And they wouldn't leave him alone. They were just kicking him, punching him, hitting him with the baton several times. Just striking him. Several times."

Erik came out of the house, told the police to leave Ismael and Ana Lisia alone, and tried to help Ismael up while he was being beaten. Officers Garcia and De La Cruz knocked Erik down with a baton strike. Salazar was carrying her son. She tried to help Erik, her husband. The police gave her a beating and then dragged her body by the arms and legs over the top of Ana Lisia. Ana Lisia told the officers to leave Salazar alone because she was pregnant. The police kept "striking and hitting [Ismael] left and right." According to Ana Lisia, the police were still beating Ismael when she was taken away. He was lying on the sidewalk and there was "a big puddle of blood."

Perry's testimony

After Perry entered the Pulido home, he walked all the way through and exited out of the back. He stated: " . . . I jumped over the next house. And I climbed over the house to where the alleyway is at, and that's where I seen Detective Moreno and he had his gun drawn. And that's when I got down from the house and jumped over the other house going west." Perry clarified that there was a house with dogs in back of the Pulido

property. He passed through the property with the dogs to get to the alley. He did not go beyond that boundary. At that point, he jumped from the property with the dogs to a series of about three more properties. Once he got to the last property in that series, he hid under a tarp. He stayed there for half an hour to 45 minutes. At that point, he moved and hid under a truck that was about 10 or 15 feet away. That is where officers found him.

The expert testimony of Smith

Like the prosecution expert, Larry A. Smith (Smith) testified regarding exigent circumstances and use of force.

Based on exigent circumstances, officers may follow a suspect into a house under fresh pursuit guidelines. After the pursuit becomes stale after five or 10 minutes, officers need additional probable cause to permit the house to be searched. If a suspect enters the front door and leaves out the back, exigent circumstances no longer justify entry into the house. Smith opined that the use of force in the case against the defendants was not legal because any exigency was gone once a detective saw Perry exit the Pulido house and go over a fence. In addition, Smith opined that the force used by the police to gain entry onto the Pulido property was excessive because the police needed a warrant and did not have one. Smith said that if officers saw a suspect enter a residence and then go to the next residence, the officers should focus on the second residence. If the police invaded the first residence, civilians would be unnecessarily placed at risk.

In forming his opinions, Smith reviewed various reports, photographs and recordings pertinent to the incident, including a use of force report. He found the use of force report suspect because 20 or so people were interviewed and no one wanted to make a statement.

On cross-examination, Smith was asked if he ever saw a suspect "double back from where they came[.]" He said he had heard of it, but that did not happen very often. Smith conceded that it would be odd for residents to deny police entry into their home after being told that a fleeing felon with a gun had just gone inside. Usually residents want the police to go inside to find the suspect. If the residents denied the police entry,

that might lead the police to believe that the residents were harboring the suspect. Smith agreed with the statement that just because someone is injured does not mean that the police used excessive force. Rather, it depends upon the circumstances. The longer an armed gunman is inside a house, the more dangerous it is for the community and surrounding houses. If the police have a legal right to get control of the scene, it is important for them to get control of it sooner rather than later. When a gunman is inside, he has cover. If the police see a suspect go into a house and lose sight of him, the exigency could last more than an hour.[9]

DISCUSSION

I. Sufficiency of the Evidence (All Defendants).

The defendants argue that there was insufficient evidence that the police officers were acting lawfully (1) because they did not have exigent circumstances permitting a warrantless search of the Pulido property; (2) because they did not have probable cause to believe Perry was located on the Pulido property; (3) because they used excessive force when arresting Ismael, Erik and Ana Lisia had a right to use reasonable force when coming to Ismael's defense; and (4) because there was no evidence that the police used reasonable force to arrest Salazar. In the absence of lawful conduct by the police, the defendants maintain that they did not violate section 69 or section 148 and their convictions must be reversed. In the alternative, Ana Lisia and Salazar argue that there was no evidence that they obstructed or delayed a police officer.

As discussed below, we disagree.

A. Standard of review.

When a defendant contends that the evidence at trial was insufficient to justify a conviction, "we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find

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[9] The defense case also included the testimony of Liliana and two defense investigators, George Patrick Little and Edward Acosta.

the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.)

B. Sections 69 and 148, subdivision (a).

Section 69 can be violated in two ways. "The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty. [Citation.]" (*In re Manuel G.* (1997) 16 Cal.4th 805, 814.) "The legal elements of a violation of section 148, subdivision (a) are as follows: (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the performance of his or her duties. [Citations.]" (*People v. Simons* (1996) 42 Cal.App.4th 1100, 1108–1109.) Each offense requires "that the officer . . . be engaged in the lawful performance of his duties." (*People v. Wilkins* (1993) 14 Cal.App.4th 761, 776 (*Wilkins*).) In other words, when "the offense is committed upon an officer effecting an arrest, the arrest must have been lawful. [Citations.]" (*Ibid.*)

C. Lawfulness of the warrantless search of the Pulido property.

Entry onto private property without a warrant is presumptively unreasonable in the absence of exigent circumstances. (*Brigham City v. Stuart* (2006) 547 U.S. 398, 403 (*Stuart*).) Such circumstances exist when the police are required to enter private property to prevent the imminent destruction of evidence or a suspect's escape, to engage in the hot pursuit of a fleeing felon, or to eliminate the risk of danger to the police or others. (*Ibid.*; *People v. Celis* (2004) 33 Cal.4th 667, 676.) In addition, the police must have probable cause to believe that the premises contains the aforementioned evidence or suspect. (*People v. Ray* (1999) 21 Cal.4th 464, 471.)

The defendants argue that the police did not have exigent circumstances because Perry was not a dangerous and desperate suspect who recently committed a violent crime. Moreover, according to the defendants, they were on friendly terms with Perry, so he was not a threat to them. But there were two felony arrest warrants for Perry (one of which

was for possessing a loaded firearm in public place), he was a known gang member, Officer Benavides believed Perry was armed, he fled from the police, the police were in pursuit of him and they had legitimate concerns that he might escape and that he posed a risk to the officers, people in the Pulido home and the public in general. Case law did not require anything more for exigent circumstances.

Ignoring all these facts, the defendants suggest that exigent circumstances were absent because Detective Benavides and Detective Moreno merely wanted to talk to Perry as a possible witness to a homicide; no one ever observed Perry carrying a weapon, nor did they find one on Perry; no one in the radio broadcasts ever described Perry as potentially armed; and the police never acted as though Perry was armed. This argument misses the mark. The totality of the facts justified a warrantless search. "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.' [Citation.]" (*Stuart*, *supra*, 547 U.S. at p. 404.) With respect to how the police acted, the testimony established that Detective Benavides advised several officers that Perry appeared to be armed. The police formed a perimeter around the Pulido property and attempted to and eventually did gain entry. The circumstances and reasonable inferences establish that the police believed Perry was armed.

According to the defendants, Detectives Benavides and Moreno waited a few minutes for backup and then waited a little longer before deciding to enter the Pulido property. This demonstrated that there was no true emergency and therefore exigent circumstances did not exist. But there was ample evidence of exigency. The evidence showed that the police lost sight of Perry. They formed a plan to enter the Pulido property once a perimeter was established. According to Deputy Silverman, a felon who flees into a home is a threat. And Smith, the defense expert, conceded that exigent circumstances could last up to an hour if the police lose sight of a fleeing suspect who enters a residence.

The defendants contend that the police chose the wrong course of action. What the police should have done, the defendants aver was surround the Pulido property and

wait for a warrant or try to talk Perry out. But this suggestion is based on the faulty premise that Perry did not pose a threat to the police or others, and that there was no risk that Perry would escape. Deputy Silverman's expert opinion, however, established that just such a threat and risk existed.

Even if exigent circumstances were established by the evidence, the defendants argue that the police did not have probable cause to believe that Perry was located on the Pulido property. They base this argument on Detective Moreno's radio broadcast. The way the defendants interpret the broadcast, the detective saw Perry exit the Pulido home and leave the property. That misstates the evidence. The airship asked Detective Moreno where he last saw Perry. The detective iterated the Pulido street address. Then he said that while he was in the alley, he saw Perry hop over a wall. The detective ended by saying "probably [the Pulido street address]." Thus, he identified the Pulido property as Perry's likely location.

Ana Lisia refers us to pages from the transcript of the radio broadcasts in which the police dispatcher states that Perry was running "southbound through the houses" and that he was "now running." From this transcript, Ana Lisia infers that the police knew that Perry was no longer in the Pulido home. This argument carries no weight. The transcript did not qualify as evidence, which the trial court made clear to the jury. It was offered to the jury only as a guide. Accordingly, we decline to consider it as evidence. Beyond that, the dispatcher's statements precede Detective Moreno's broadcast. The dispatcher did not have personal knowledge of Perry's last known whereabouts. Detective Moreno did. If the transcript had been admitted into evidence, it would not have helped the defendants. There was no foundation for the dispatcher's statements. On the other hand, Detective Moreno's broadcast is evidence of the police's actual knowledge at the scene.

In our view, there was sufficient evidence to establish lawful entry onto the Pulido property based on both exigent circumstances and probable cause to believe that Perry could be located there.

D. Use of force: Ana Lisia and Erik.

Under the Fourth Amendment of the United States Constitution, the amount of force used by officers when making an arrest is excessive if it "was objectively unreasonable given the circumstances they faced." (*Allgoewer v. City of Tracy* (2012) 207 Cal.App.4th 755, 763.) A person "may use reasonable force to defend life and limb against excessive force[.]" (*People v. Curtis* (1969) 70 Cal.2d 347, 357; *People v. Olguin* (1981) 119 Cal.App.3d 39, 46–47 ["a police officer is not permitted to use unreasonable or excessive force in making an otherwise lawful arrest, and if the officer does use such force the arrestee may use reasonable force to protect himself in accordance with the principles of self-defense"].) The parties assume that a person may also defend a third person against excessive force. For purposes of this opinion, we will make the same assumption. We note that the jury was instructed pursuant to a modified version of CALCRIM No. 2670. The instruction provided that the People bore the burden of proving that the police lawfully performed their duties, and that if an officer uses excessive force while arresting a person, that person "may lawfully use reasonable force to defend himself, herself or another."[10]

Erik and Ana Lisia argue that the police used excessive force against Ismael when they rushed him with a stampede of officers, and when they repeatedly hit him in the head with their batons. But the record discloses no evidence that the police rushed Ismael in an unnecessary stampede. Rather, it shows that the police engaged in takedowns of Ismael, Ana Lisia and Erik after Ismael resisted arrest and Ana Lisia and Erik both attacked the police with their fists.

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[10] CALCRIM No. 2670 provides in relevant part: "If a peace officer uses unreasonable or excessive force while (arresting or attempting to arrest/ [or] detaining or attempting to detain) a person, that person may lawfully use reasonable force to defend himself or herself." The trial court modified this portion of CALCRIM No. 2670 to include defense of another.

E. Use of force: Salazar.

Salazar contends that the People failed to prove that the officer who arrested her used a lawful amount of force during her arrest.

Detective Benavides testified that when Salazar approached "the officers[, she] start[ed] pushing and kicking and [was] taken into custody." Later, he testified that a uniformed officer told Salazar that she was under arrest. She used her body weight and legs to resist. Someone was hit with a collapsible baton. It might have been Erik or Salazar, but Detective Benavides could not recall. He did not witness all of the force used against Salazar. Because Detective Benavides did not witness all the force used against Salazar, there is no evidence that all of it was reasonable. We therefore conclude that Salazar did not violate section 148, subdivision (a) in connection with her own arrest. Our conclusion, however, does not pertain to the delay or obstruction she may have otherwise caused in relation to the arrest of Ismael, Erik and Ana Lisia, or to the search of the Pulido property based on exigent circumstances.

F. Resisting police officers by violence or threat of violence: Ana Lisia.

Detective Thompson testified that when he attempted to take Ismael into custody, Ana Lisia said to let go and not touch him. Then she swung at Detective Thompson but missed. He had to duck. His attention was drawn to her, and he could not tell what happened to Ismael. She struggled and kept pulling her arm away when Detective Thompson tried to put her in handcuffs. This evidence sufficiently established that Ana Lisia used violence or threat of violence within the meaning of section 69 to deter Detective Thompson from performing his lawful duty to search for Perry and arrest Ismael.

She argues that her refusal to consent to the warrantless entry onto the Pulido property was not a crime. (*People v. Wetzel* (1974) 11 Cal.3d 104, 109 [the refusal to give police consent to enter a home cannot constitute grounds for a lawful arrest or a subsequent search and seizure].) Even if true, the point is moot and we need not analyze it. As explained above, her conviction is soundly supported by her attack on the police officers after she refused them entry.

G. Resisting police officers: Salazar.

Based on Detective Benavides's testimony, the evidence showed that Salazar pushed and kicked officers when she came outside. This evidence was sufficient to establish that Salazar delayed or obstructed police officers within the meaning of section 148, subdivision (a). When she pushed and kicked officers, she demanded attention. As a result, she drew attention away from the search for Perry and therefore siphoned manpower away from that search. She also prevented or delayed officers from helping arrest Ismael, Erik and Ana Lisia.

Salazar complains that the People did not prove what was required by the modified version of CALCRIM No. 2656 given to the jury because there was no evidence of who arrested her. This complaint is not well-taken. In relevant part, the instruction provided that the People had to prove that Salazar "willfully resisted, obstructed, or delayed Detective Thompson, Officer Marx, Officer Garcia, and/or Officer De La Cruz in the performance or attempted performance of" their duties as police officers. All the People had to prove is that the police—which included these particular officers—were delayed in the lawful performance of their duties in connection with the other suspects. The People did.

II. Exclusion of Photographs (Ana Lisia and Erik).

Ana Lisia and Erik argue that the trial court denied them due process and the right to present a defense when it excluded photographs of Ismael. This argument lacks merit.

A. Relevant facts.

The People filed a motion pursuant to Evidence Code sections 352 and 402 to exclude seven photographs of Ismael's injuries identified as 1A, 1D, 2D, 3D, 4D, 7A and 7C. Photograph 1A is a blurry picture of Ismael wearing a hospital gown and sitting in a wheelchair. His injuries are not visible. Photograph 1D is a close up showing Ismael with a bandage on his forehead. It is possible to see some discoloration around his eyes. Photograph 2D depicts Ismael wearing a hospital gown and sitting up in a hospital bed.

It depicts Ismael's head injuries.[11] Some of Ismael's head injuries—a cut and abrasion on the forehead, and an abrasion on the bridge of his nose—are somewhat visible in photograph 3D. Photograph 4D is the most graphic in a series of photographs of injuries to Ismael's arms. Ismael's head injuries to his eyes, forehead and nose can best be seen in photographs 7A and 7C. They are close ups of him at the hospital.

The trial court asked for an offer of proof.

Counsel for the defendants argued that the photographs were relevant to show that Ismael was an elderly man who could not have resisted arrest with significant strength, and that he suffered a beating implicating the use of excessive force by the police.

In response, the trial court said: "I don't think it is unreasonable to have photographic evidence [that Ismael was hit and suffered some significant injuries]. [¶] But I think that some of these photographs are unnecessarily graphic, to prove the point [the defense is] trying to prove. [¶] Because it doesn't sound like there's much dispute about that either. In terms of the fact that he was being hit. [¶] Now, I haven't heard all the evidence yet, so I don't know. But I've heard the People's case, and so far I haven't heard anything from them that there wasn't an altercation with him." The prosecutor said that "we would stipulate that he was struck and stipulate that there were injuries."

The trial court then ruled as follows. "So I believe that in order to demonstrate that, even with a stipulation from the People, that I'm not going to allow—I don't think [photograph] 1A adds anything to that. I don't think [photograph] 1D adds anything to that. So I'm not going to allow [them]." It also excluded photographs 3D, 4D, 7A and 7C because they were cumulative as well as prejudicial because they were graphic. The only one of the seven photographs that the trial court allowed into evidence was photograph 2D.

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[11] Ana Lisia explained in her opening brief that the trial court "ruled that only a few of the photographs, including just **one** photo showing Ismael's head injuries, would be admitted." Erik and Salazar joined in Ana Lisia's arguments. Ana Lisia was referring to photograph 2D.

The following day, defense counsel appeared for trial and wanted to introduce four photographs of Ismael, identified as F1 through F4. Three of them were enlargements of photographs that had been excluded the day before. The trial court excluded these photographs and commented, "I think the other pictures adequately represent the issue concerning [Ismael]."

B. Standard of review.

In general, the exclusion of defense evidence pursuant to section 352 of the Evidence Code does not implicate federal constitutional principles and is reviewed for an abuse of discretion. (*People v. Holloway* (2004) 33 Cal.4th 96, 134; *People v. Cornwell* (2005) 37 Cal.4th 50, 82, overruled on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) When a trial court abuses its discretion, a reviewing court will examine the record to determine whether it is reasonably probable that the defendant would have obtained a more favorable result in the absence of the error. (*People v. Harris* (2005) 37 Cal.4th 310, 336; *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).) If a defendant claims that the exclusion of evidence deprived him or her of the due process right to a fair trial, a reviewing court will analyze the issue de novo. (*People v. Sully* (1991) 53 Cal.3d 1195, 1254.) This type of federal constitutional error is subject to inquiry under *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*). (*People v. Wright* (2005) 35 Cal.4th 964, 974.) Per *Chapman*, the reviewing court asks whether the constitutional error was harmless beyond a reasonable doubt. (*Chapman, supra*, 386 U.S. at p. 24.)

C. Evidence Code section 352; due process.

"The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code, § 352.) Typically, the application of Evidence Code section 352 to defense evidence does not infringe on a defendant's constitutional rights. (*People v. Cunningham* (2001) 25 Cal.4th 926, 998.) But the statute "must yield to a defendant's due process right to a fair trial and . . . to present all

relevant evidence of *significant* probative value to his or her defense. [Citation.]" (*Id.* at pp. 998–999.) "Although completely excluding evidence of an accused's defense theoretically [could violate these rights], excluding defense evidence on a minor or subsidiary point does not impair an accused's due process right to present a defense. [Citation.] If the trial court misstepped, '[t]he trial court's ruling was an error of law merely; there was no refusal to allow [defendant] to present a defense, but only a rejection of some evidence concerning the defense.' [Citation.]" (*People v. Fudge* (1994) 7 Cal.4th 1075, 1103.)

D. Propriety of the evidentiary rulings; prejudice.

The first question presented by Ana Lisia and Erik is whether photographs 7A and 7C constituted relevant evidence with significant probative value to the defense theory that the defendants were protecting Ismael from excessive force. If so, they were denied the constitutional right to present a defense. The second question is whether the trial court otherwise abused its discretion.

In our view, photographs 7A and 7D did not have significant probative value as to the defense because Ana Lisia and Erik attacked the police before Ismael was injured. Therefore, the photographs did not tend to prove that they acted in lawful defense of another. Further, there was ample evidence from the other photographs as well as Ana Lisia's testimony that Ismael received a severe beating. For the same reasons, we conclude that the trial court did not abuse its discretion when it ruled that photographs 7A and 7D were cumulative and too prejudicial.

Regardless, any error was harmless beyond a reasonable doubt under either *Watson* or *Chapman* because the evidence favorable to the prosecution showed that Erik and Ana Lisia violated section 69 by attacking the police with their fists as soon as Detective Thompson told Ismael he was under arrest and tried to place him in handcuffs. At that point, Ismael had not been injured and the police could not have been using excessive force requiring Erik and Ana Lisia to lawfully come to his aid by using violence or threats of violence.

III. The Jury Instructions (Ana Lisia and Erik).

Ana Lisia and Erik argue that the trial court erred when it rejected their request to instruct the jury pursuant to the self-defense or defense of others instructions in CALCRIM No. 3470 and instead gave the jury a modified version of the use of force instruction in CALCRIM No. 2670. Upon review, we conclude that Ana Lisia and Erik failed to make a case for reversal.

A. Relevant facts.

The trial court informed the parties of its intent to give a modified use of force instruction based on CALCRIM No. 2670 to cover "the legal use of reasonable force to defend against the unlawful use of excessive force." The defense requested a self-defense and defense of another instruction pursuant to CALCRIM No. 3470. The trial court declined the request.

The jury was given a modified version of CALCRIM 2670 providing that the People had the burden of "proving beyond a reasonable doubt that Detective Thompson, Officer Marx, Officer Garcia, and/or Officer De La Cruz was lawfully performing his duties as a peace officer." The instruction explained that a peace officer is not acting lawfully if he improperly arrests someone or uses excessive force in his duties. A lawful arrest was defined. It was further explained that "[s]pecial rules control the use of force. [¶] A peace officer may use reasonable force to arrest or detain someone, to prevent escape or to overcome resistance or in self-defense. [¶] If a person knows, or reasonably should know[,] that a peace officer is arresting or detaining him or her, the person must not use force . . . to resist an officer's use of reasonable force. However, you may not find the defendant guilty of resisting arrest if the arrest was unlawful, even if the defendant knew or reasonably should have known that the officer was arresting him. [¶] If a peace officer uses unreasonable or excessive force while arresting or attempting to arrest or detaining or attempting to detain a person, a person may lawfully use reasonable force to defend himself, herself, or another. [¶] A person being arrested uses reasonable force when he or she: One, uses that degree of force that he or she actually believes is reasonably necessary to protect himself or herself from the officer's use of unreasonable

or excessive force. [¶] And [¶] Two, uses no more force than a reasonable person in the same situation would believe is necessary for his or her protection. [¶] . . . [¶] If you find the defendant used reasonable force to defend himself, herself, or another from the use of excessive force, you must find the defendant not guilty of Resisting an Executive Officer."

After deliberating, the jury sent the trial court a jury request form that stated: "We are considering the final paragraph of [CALCRIM Nos.] 2651, 2652, 2656 and the [third] paragraph of [CALCRIM No.] 2670 beginning[,] 'If a peace officer uses unreasonable. . .' Does the burden of proof fall to the People to show beyond a reasonable doubt that the force used by police officers was not unreasonable or excessive in order to preclude the possibility of a person lawfully using reasonable force to defend himself, herself or another."

The trial court wrote on the jury request form, "Answer: yes." That answer was agreed to by all counsel.

The jury requested and received a read back of the testimony of Detective Thompson and Officer Garcia.

B. Standard of review.

A claim of instructional error is reviewed de novo. (*People v. Guiuan* (1998) 18 Cal.4th 558, 569–570.) Under the California Constitution, instructional error is subject to *Watson* analysis. (*People v. Flood* (1998) 18 Cal.4th 470, 490.) Federal constitutional principles are implicated if a trial court fails to instruct the jury on an element of the offense. In that situation, the stricter *Chapman* standard applies. (*Neder v. United States* (1999) 527 U.S. 1, 9, 15 (*Neder*).) No case has taken a stance on the appropriate standard if a trial court fails to give a requested instruction on a defense that is supported by substantial evidence. We cannot ignore, however, that our high court held that it is only state law error when a trial court fails to sua sponte instruct on a lesser included offense in a noncapital case (*People v. Breverman* (1998) 19 Cal.4th 142, 165) and has not seen fit to expand *Chapman* past *Neder*. Thus, we presume that the failure to properly instruct on a defense is subject to *Watson*.

C. Principles applicable to claims of instructional error.

A trial court must instruct on "any affirmative defense for which the record contains substantial evidence [citation]—evidence sufficient for a reasonable jury to find in favor of the defendant [citation]—unless the defense is inconsistent with the defendant's theory of the case [citation]. In determining whether the evidence is sufficient to warrant a jury instruction, the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt . . . .' [Citation.]" (*People v. Salas* (2006) 37 Cal.4th 967, 982–983.) "[T]he correctness of jury instructions is to be determined from the entire charge of the court, not from a consideration of parts of an instruction or from a particular instruction. [Citations.]" (*People v. Burgener* (1986) 41 Cal.3d 505, 538, disapproved on another point in *People v. Reyes* (1998) 19 Cal.4th 743, 753–754.) "The failure to give an instruction on an essential issue, or the giving of erroneous instructions, may be cured if the essential material is covered by other correct instructions properly given. [Citations.]" (*People v. Dieguez* (2001) 89 Cal.App.4th 266, 277.)

D. The sufficiency of the instruction given.

The defendants contend that the trial court's modified version of CALCRIM No. 2670 was inadequate because: (1) it failed to inform the jury that the defendants were entitled to stand their ground and were not obligated simply to watch or retreat while Ismael was being beaten; (2) it was confusing because it combined the elements of the charged offense with the elements of self-defense and defense of others; and (3) it failed to make clear that the prosecution had the burden of proving that the force used was not unreasonable or excessive so as to preclude the possibility of the defendants lawfully using reasonable force to defend themselves or another. The defendants contend that these deficiencies would have been remedied by CALCRIM No. 3470. Assuming for the sake of argument that there was error, it was harmless.

The prosecution evidence established that Ana Lisia and Erik attacked the police when Detective Thompson tried to handcuff Ismael but before Ismael was knocked to the ground and suffered any injuries. As a result, Ana Lisia and Erik violated section 69

before any potential excessive force occurred. We easily conclude that absent the purported error, it is not reasonably probably under *Watson* that Ana Lisia and Erik would have received a more favorable result. If *Chapman* applied, we would find the error harmless under that standard, too.

IV. Cumulative Error (Ana Lisia and Erik).

If the trial court erred when it excluded Ismael's photographs and when it failed to instruct the jury under CALCRIM No. 3470, and if those errors are individually harmless, Ana Lisia and Erik argue that the cumulative impact of those errors is prejudicial and reversal is required. Because the trial court properly excluded the photographs, the cumulative error argument fails.

V. Posttrial Motions (Ana Lisia).

Ana Lisia moved for dismissal (§ 1385, subd. (a)), reduction of her offense to a misdemeanor (§ 17, subd. (b)), or a new trial (§ 1181).

On appeal, she claims that the trial court should have dismissed the case in the interests of justice because the evidence strongly indicated her innocence. She also claims that her offense should have been reduced to a misdemeanor because the trial court treated her as a misdemeanant. Last, she claims she was entitled to a new trial because the verdict was contrary to the evidence.

These claims are unavailing.

A. Relevant facts.

In her motion, Ana Lisia argued that the verdict against her was contrary to the evidence and that the trial court should independently determine whether the evidence was sufficient. She also claimed, inter alia, that the trial court committed instructional error when it failed to give CALCRIM No. 3470; the prosecution should have charged Ana Lisia with violating section 148; the prosecution committed misconduct during rebuttal argument; and the case should be dismissed or the charge should be reduced to a misdemeanor. After the parties argued orally, the trial court stated: "I am familiar with the issues that are being raised by the lawyers. [¶] I respectfully disagree with respect to

the allegations of error on the part of the [trial court]. The motion[] for new trial [is] denied."

The trial court turned to sentencing without specifically ruling on Ana Lisia's request for a dismissal or a reduction of her offense.

Officer Marx gave a victim impact statement. He stated: "Nearly two years ago the Pulido family willingly turned what would have been an uneventful arrest into a melee that placed the lives of police officers in jeopardy, caused the taxpayers thousands of dollars, depleted our already thin [Los Angeles Police Department] resources and contributed to the false notion that it's acceptable to violently confront the police." For purposes of making sentencing decisions, he urged the court to remember "that [the Pulido family] made the decision . . . that got them to this place. . . . [They] have rightfully earned a place in the California state prison system and . . . [the trial court] must send a powerful message that [the trial court] and this city and state will not accept violent assaults upon police officers."

Ana Lisia's counsel argued that the expenditure of resources "was clearly a result of [Detectives] Benavides and Moreno misinforming their contact at dispatch that they were in pursuit of a murder suspect who may have been armed, causing all of the people that showed up at the Pulido residence to believe that there was in fact a hostage situation taking place with a barricaded, armed felon inside[.]" He stated that Ana Lisia bore no blame for the gathering of hostile forces, and she should receive probation or, at worst, county jail time.

The trial court suspended imposition of sentence as to Ana Lisia and placed her on formal probation on the condition, inter alia, that she serve 90 days in jail.

B. Standard of review.

When a trial court denies a request to dismiss under section 1385, the ruling will stand unless there was an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 374 (*Carmony*).) The same abuse of discretion standard of review applies when a trial court exercises its discretion under section 17, subdivision (b) and decides whether

to treat a wobbler as a felony or misdemeanor. (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978 (*Alvarez*).)

The denial of a motion for new trial will be upheld absent a manifest abuse of discretion. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1251; *People v. Pena* (1984) 151 Cal.App.3d 462, 478; *People v. Dickens* (2005) 130 Cal.App.4th 1245, 1252.) "In reviewing an order granting a new trial based on insufficiency of the evidence, the appellate court reviews the evidence in the light most favorable to the trial court's ruling, drawing all factual inferences that favor the trial court's decision. [Citations.] The trial court's factual findings, express or implied, will be upheld if supported by any substantial evidence. [Citation.] The order will be reversed only if it can be said as a matter of law that there is no substantial evidence to support a judgment contrary to the verdict. [Citation.]" (*Ibid.*) Because an appellate court must independently review the record and "determine whether the trial court's ruling is supported by substantial evidence, it is irrelevant that the trial court failed to articulate [the] reasons" for its decision. (*Id.* at p. 1254.)

C. The relevant statutes.

Section 1385, subdivision (a) provides that a trial court "may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed." A defendant has no right to make a motion under section 1385, subdivision (a). (*Carmony, supra,* 33 Cal.4th at p. 375 ["A defendant has no right to make a motion, and the trial court has no obligation to make a ruling, under section 1385"].) But he or she can invite a trial court to exercise its discretion. (*Carmony, supra,* at p. 375.) "A determination whether to dismiss in the interests of justice after a verdict involves a balancing of many factors, including the weighing of the evidence indicative of guilt or innocence, the nature of the crime involved, the fact that the defendant has or has not been incarcerated in prison awaiting trial and the length of such incarceration, the possible harassment and burdens imposed upon the defendant by a retrial, and the likelihood, if any, that additional evidence will be presented upon a retrial. When the balance falls clearly in favor of the defendant, a trial court not only may but

should exercise the powers granted to him by the Legislature and grant a dismissal in the interests of justice." (*People v. Superior Court (Howard)* (1968) 69 Cal.2d 491, 505.)

A trial court has the option of treating a violation of section 69 as a felony or misdemeanor. (*People v. Martinez* (1999) 71 Cal.App.4th 1502, 1510.) "When a crime is punishable, in the discretion of the court, either by imprisonment in the state prison . . . , or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances: [¶] . . . [¶] (3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor." (§ 17, subd. (b)(3).) When exercising its discretion, a trial court should consider the nature and circumstances of the offense, the defendant's appreciation and attitude toward the offense, or her traits of character as evidenced by her behavior and demeanor at the trial. In addition, if appropriate, the trial court should consider the general objectives of sentencing. (*Alvarez*, *supra*, 14 Cal.4th at p. 978.) "It is settled that where the offense is alternatively a felony or misdemeanor (depending upon the sentence), and the court suspends the pronouncement of judgment or imposition of sentence and grants probation, the offense is regarded a felony for all purposes until judgment or sentence and if no judgment is pronounced it remains a felony [citations]." (*People v. Esparza* (1967) 253 Cal.App.2d 362, 364–365.)

Section 1181 provides: "When a verdict has been rendered or a finding made against the defendant, the court may, upon his application, grant a new trial, in the following cases only: [¶] . . . [¶] 6. When the verdict or finding is contrary to law or evidence. . . ." Thus, "[w]hile it is the exclusive province of the jury to find the facts, it is the duty of the trial court to see that this function is intelligently and justly performed, and in the exercise of its supervisory power over the verdict, the court, on motion for a new trial, should consider the probative force of the evidence and satisfy itself that the evidence as a whole is sufficient to sustain the verdict. [Citations.]" (*People v. Robarge* (1953) 41 Cal.2d 628, 634.)

D. The request for dismissal—section 1385, subdivision (a).

The trial court had no obligation to rule on Ana Lisia's motion to dismiss. The reporter's transcript and the clerk's transcript contain no ruling. Thus, it appears that the trial court did not rule. But it had no obligation to rule, as provided in *Carmony*. Conceivably, if the interests of justice strongly favored dismissal, then this might be a case where the trial court should have given dismissal consideration and exercised its discretion. But this was not such a case. The prosecution evidence established that the police lawfully entered the Pulido property, Detective Thompson lawfully attempted to arrest Ismael, and Ana Lisia attacked the police. Under those circumstances, dismissal was not in the interests of justice.

E. The request to reduce the offense—section 17, subdivision (b).

Ana Lisia argues that by putting her on probation and ordering her to serve 90 days in county jail as a condition of probation, the trial court treated her as a misdemeanant. As a result, she contends that the trial court should have taken the extra step of reducing her offense to a misdemeanor as a matter of course. She cites no law in support of this argument, so we reject it.

In the alternative, Ana Lisia argues that this case should have been reduced under section 17, subdivision (b) as interpreted by *Alvarez* because she "was a young woman with no prior criminal record who committed her 'crime' in response to an illegal police invasion of her family home and vicious police assault on her father." This argument is not supported by the record.

The evidence credited by the jury showed that the police lawfully attempted to arrest Ismael, which spurred Ana Lisia to violently attack them. The nature of the offense and Ana Lisia's flagrant lack of respect for the police support the trial court's implied decision to decline her request to treat her as a misdemeanant. Moreover, there is no evidence that Ana Lisia has any remorse over her actions. Rather, she defends her actions at every turn. Simply, this is not the case in which a reduction was appropriate. By treating her as a felon, the trial court served the objectives of sentencing because it "encourage[ed] [Ana Lisia] to lead a law-abiding life in the future and deter[red] . . . her

from future offenses." (Cal. Rules of Court, rule 4.410(a)(3).) In addition, it punished Ana Lisia and "deter[red] others from criminal conduct by demonstrating its consequences." (Cal. Rules of Court, rule 4.410(a)(2), (4).)

F. The motion for new trial—section 1181.

Ana Lisia complains that there is nothing in the record to indicate that the trial court exercised the discretion granted to it pursuant to section 1181. We cannot concur. The trial court indicated to the parties that it was familiar with the issues being raised and then specifically denied Ana Lisia's motion for new trial. Thus, the record clearly establishes that the trial court exercised its discretion when ruling. While it is true, as Ana Lisia points out, that the trial court did not place its thoughts on the records, per *Dickens*, it was not required to do so.

Even if the trial court independently weighed the evidence, Ana Lisia contends that it abused its discretion. But as we already indicated in part I of the Discussion, *ante*, the verdict was supported by sufficient evidence. We must therefore uphold the denial of Ana Lisia's motion for new trial.

VII. *Pitchess* Discovery (Ana Lisia and Salazar).

Ana Lisia and Salazar request that we conduct an independent review of the transcript of the in camera *Pitchess* hearing to determine whether there was any discoverable evidence. The People have no objection. Based on our review of the transcript, we conclude that the trial court properly exercised its discretion when deciding what to disclose and what not to disclose to the defense. (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.)

All other issues are moot.[12]

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[12] Erik and Salazar joined the arguments of their coappellants to the extent those arguments inure to their benefit. Because none of those arguments were successful, Erik and Salazar gained no benefit.

DISPOSITION

The judgments are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
CHAVEZ